Supreme Court, U. S.
FILED
SEP 27 1979
MICHAEL RODAK, JR., CLERK

No. 79-42

IN THE

SUPREME COURT OF THE

UNITED STATES

ANNE M. PAVILONIS,

Petitioner

v.

PATRICIA R. HARRIS, Sec.,

OF

HEALTH, EDUCATION and WELFARE,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE

FIRST CIRCUIT

MEMORANDUM FOR THE PETITIONER IN REPLY

Anne M. Pavilonis

292 Park Street

Boston, Ma., 02132

OCTOBER TERM, 1978

MEMORANDUM FOR THE PETITIONER

IN REPLY

The respondent's regulations specify in its language the "establishment or maintenance of control groups or schools".(Sec. 185.13 (2) (d)); she repeats the language of control schools in her Memorandum for the Respondent in Opposition p.3. The language of "control schools" is not present in the Emergency School Aid Act, 20 USC 1609 (a) (15).

Control groups are defined by Doherty, M.E. and Shemberg, K.M. in Asking Questions About Behavior, Scott, Foresman & Co. 1970, page 79:

> "Control groups permit the researcher to make comparisons between the effects of the particular manipulation he is investigating --- and no manipulation at all."

> "A--- control procedure---is the general strategy of keeping all things constant across groups or subjects, everything except the specific manipulation that is under examination".

In this instance individualized instruction is the behavioral manipulation under examination.

The magnet schools in Boston are voluntarily racially balanced and have ESAA grants for a program of individualized instruction previously funded by Title I.

The ESAA awards are allocated according to the respondent's specified competitive point system that allows greater points to schools having individualized instruction.

The State, in compliance with the respondent's regulations, established District III schools as control schools,

assigning the petitioners on the bases of their race to those schools, creating a racial balance constant with the magnet schools. The State also deprived the District III schools of the individualized instruction provided by Massachusetts Law Ch. 766.

As a result of the deprivation of the individualized instruction, the District III control schools were denied equal protection of ESAA grants, because the control schools can not acquire equal points that determine the allocation of ESAA grants. The respondent's competitive point system reward those schools having individualized instruction in place at time of their application for the grant. Thus, the special programs of individualized instruction eligible for ESAA grants is denied the petitioners.

The respondent's regulations requiring control schools infringe upon the United States District Court of Massachusetts - Garrity, J. His Orders at page 46 state in pertinent part ---"schools in Community Districts are equal in educational offerings to Citywide schools." The United States District Court of Massachusetts - Garrity, J. did not order the Community District schools racially balanced.

The assignment of the petitioners on the bases of their race to control schools having an inferior learning environment violates the petitioner's equal protection of the Education Amendments of 1972, 20 USC 1652 enacted June 23, 1972, which states in pertinent part ---"No officer, agent, or employee of the Department of Health, Education and Welfare (including

the Officer of Education) or any other Federal Agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student--- where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system---".

Wherefore the petitioner prays for the relief specified in her petition.

By Its Attorney, pro se

Ann M. Pavlonis